SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 646

HARRY B. HELMSLEY,
Petitioner,
v.
CITY OF DETROIT and CHARLES N. WILLIAMS;
and
COUNTY OF WAYNE and LOUIS H. FUNK,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY FOR PETITIONER

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I.

THE FEDERAL QUESTION

A. Respondents make the untenable assertion in their Brief in Opposition that there is no federal question here; that it was disposed of by a footnoted comment in the

Opinion of the Court of Appeals that a federal question under the Constitution was "vaguely alleged" by Petitioner in his pleadings, and was "never pursued." We are constrained to state, with full respect for the Court of Appeals, that said comment is without foundation and was absolutely unwarranted, if only for the following reasons:

1. Paragraph 1 of the Complaint in each of the four consolidated cases at bar alleges:

> "This court also has jurisdiction because this action arises under the Fourteenth Amendment to the Constitution of the United States as hereinafter more fully appears." (6a, 22a, 43a, 63a.)

Paragraph 9 of each Complaint alleges:

> "At the same time the assessors have been wilfully and deliberately over-assessing the property of Plaintiff in an amount substantially exceeding 7 times its true cash value, the assessors have been deliberately and wilfully assessing most of the real and personal property in the City of Detroit substantially under cash or market value . . . Said assessment . . . wilfully discriminating against Plaintiff and his property, is fraudulent, amounts to arbitrary taking of Plaintiff's property without compensation, deprives Plaintiff of his property without due process of law, denies to Plaintiff equal protection of the laws, and is in violation of the due process clause, being Sec. 1 of the Fourteenth Amendment to the Constitution of the United States." (11a-12a, 27a-29a, 48a-50a, 68a-69a.)

2. Petitioner proved these allegations at the trial, putting in evidence the market value of his own property, and establishing the inequality of property valuation by putting into evidence over the objections of Respondents (114a-115a, 176a, 177a) the representation and admissions of the City Officials that the general level of Detroit assess-

ment is set at approximately 50 per cent of market value. (Exhibit 11, 291a-293a), (Exhibits 19-22a, 304a-313a).

3. The conclusion of Petitioner's main brief in the Court of Appeals, reiterating his argument to the District Court, sums up the constitutional point thus: "The undisputed facts, on the record here, are that, as compared to the general level of assessment in the City of Detroit, plaintiff's property has been over assessed by at least 1500% in 1960 and 1961, and by at least 670% in 1962 and 1963.

This, we submit, constitutes constructive fraud, discrimination and confiscation."

B. In their Brief In Opposition, respondents fail to recognize the fundamental verity that uniformity of method of assessment is by no means assurance of equality of valuation. Where a particular property is assessed at many times market value, but the general level of assessment is much less than market value, inequality of valuation obviously exists. Inequality of valuation is discrimination in violation of the equal protection clause of the Fourteenth Amendment under the long standing doctrine of this Court stated in the Petition at pages 14-15.

II.

ABDICATION OF THE JUDICIAL FUNCTION

Petitioner does not attack the Michigan system of property tax assessment. Nor does he deny the authority of the administrative officials to use any method of valuation they choose.

However, Petitioner does contend, as does the Dissent below, that it is the function of the Court, under Michigan law, to determine whether the result of the method of valuation—the particular assessment—is fair. And we claim it

to be basic that, in discharging its judicial obligation, the Court had the duty of determining the fairness of the result of the valuation method by means of application of a legal standard.

The Michigan legislature, by mandate of the Constitution, has established that standard for the measurement of the fairness of individual assessments. The majority opinion below expressly discards that legal standard, holding that, since the administrative method of valuation is an approved method, it serves as the standard for measuring its own product—the assessment. This error, we submit, constitutes relinquishment of a vital judicial power and function, which if not reversed, will result in the gravest consequences to fundamental constitutional rights of all property taxpayers.

Respectfully submitted,

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